

AMENDED IN ASSEMBLY MAY 17, 2006

AMENDED IN ASSEMBLY MAY 11, 2006

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2805

Introduced by Assembly Member Blakeslee

February 24, 2006

An act to ~~add Section 655.7 to~~ amend Section 650.02 of the Business and Professions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2805, as amended, Blakeslee. ~~CT, PET, and MRI diagnostic imaging services.~~ *Health care referrals.*

Existing law provides that it is a misdemeanor for a healing arts licensee, including physicians and surgeons, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners, to refer a person for certain health care services if the licensee has a financial interest, as defined, with the person or entity that receives the referral. Existing law provides specified exemptions from this prohibition, including an exemption for the lease of space or equipment between a licensee and the recipient of the referral if the lease is in writing and meets certain other requirements.

This bill would, for purposes of the exemption, require the lease agreement to meet additional requirements, including (1) being signed by all parties to the agreement, (2) being exclusive with regard to all premises or equipment leased between the parties, (3) setting the aggregate lease payments in advance, (4) setting lease payments at fair market value without considering other business generated

between the parties, (5) leasing only aggregate space or equipment necessary to accomplish the commercially reasonable purpose of the lease, and (6) if the lease is for periodic intervals rather than on a full-time basis, specifying certain other terms.

Because failure to meet these additional provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law prohibits licensed persons of various health care professions from charging fees to patients for clinical laboratory services not directly performed by the licensed persons. Existing law requires a clinical laboratory performing cytological examinations of gynecologic slides to directly bill either the patient or the responsible third-party payer for the services, and prohibits the clinical laboratory from billing the physician and surgeon who requests the tests, with specified exceptions. A violation of these provisions, and specified provisions regarding referrals is a crime.~~

~~This bill would prohibit licensees of health care professions from charging, billing, or soliciting payment from any patient, client, or third-party payer, as defined, for performance of the technical component of CT, PET, or MRI diagnostic imaging services not rendered by the licensees or persons under their direct supervision. The bill would also require a radiological facility or imaging center performing the technical component of CT, PET, or MRI diagnostic imaging services to directly bill either the patient or the responsible third-party payer for the services, and would prohibit the radiological facility or imaging center from billing the physician and surgeon who requested the services. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 650.02 of the Business and Professions*
2 *Code is amended to read:*

3 650.02. The prohibition of Section 650.01 shall not apply to
4 or restrict any of the following:

5 (a) A licensee may refer a patient for a good or service
6 otherwise prohibited by subdivision (a) of Section 650.01 if the
7 licensee's regular practice is located where there is no alternative
8 provider of the service within either 25 miles or 40 minutes
9 traveling time, via the shortest route on a paved road. If an
10 alternative provider commences furnishing the good or service
11 for which a patient was referred pursuant to this subdivision, the
12 licensee shall cease referrals under this subdivision within six
13 months of the time at which the licensee knew or should have
14 known that the alternative provider is furnishing the good or
15 service. A licensee who refers to or seeks consultation from an
16 organization in which the licensee has a financial interest under
17 this subdivision shall disclose this interest to the patient or the
18 patient's parents or legal guardian in writing at the time of
19 referral.

20 (b) A licensee, when the licensee or his or her immediate
21 family has one or more of the following arrangements with
22 another licensee, a person, or an entity, is not prohibited from
23 referring a patient to the licensee, person, or entity because of the
24 arrangement:

25 (1) A loan between a licensee and the recipient of the referral,
26 if the loan has commercially reasonable terms, bears interest at
27 the prime rate or a higher rate that does not constitute usury, is
28 adequately secured, and the loan terms are not affected by either
29 party's referral of any person or the volume of services provided
30 by either party.

31 (2) A lease of space or equipment between a licensee and the
32 recipient of the referral, ~~if the lease is written, has commercially~~
33 ~~reasonable terms, has a fixed periodic rent payment, has a term of~~
34 ~~one year or more, and the lease payments are not affected by~~
35 ~~either party's referral of any person or the volume of services~~

~~provided by either party.~~ agreement meets all of the following requirements:

(A) It is in writing and signed by all parties to the agreement.

(B) It is for a term of at least one year and states the fixed periodic lease payments and aggregate lease payments which shall be set in advance.

(C) It has commercially reasonable terms, including, but not limited to, lease payments that are set at fair market value and that are not affected by either party's referral of any person, by the volume or value of services provided by any either party, or by any other business generated between the parties.

(D) All of the premises or equipment leased between the parties are exclusively reserved for the use of the lease for the term of the lessee, and the lease agreement specifies all of the premises or equipment included in the lease.

(E) If the lease is intended to provide the lessee with access to the premises or use of the equipment for periodic intervals of time, rather than on a full-time basis, for the term of the lease, it shall specify the exact lease payments and schedule for the intervals. Part-time, fluctuating schedules do not meet this requirement.

(F) The aggregate space or equipment leased does not exceed that reasonably necessary to accomplish the commercially reasonable purpose of the lease.

(3) Ownership of corporate investment securities, including shares, bonds, or other debt instruments that may be purchased on terms generally available to the public and that are traded on a licensed securities exchange or NASDAQ, do not base profit distributions or other transfers of value on the licensee's referral of persons to the corporation, do not have a separate class or accounting for any persons or for any licensees who may refer persons to the corporation, and are in a corporation that had, at the end of the corporation's most recent fiscal year, or on average during the previous three fiscal years, stockholder equity exceeding seventy-five million dollars (\$75,000,000).

(4) Ownership of shares in a regulated investment company as defined in Section 851(a) of the federal Internal Revenue Code, if the company had, at the end of the company's most recent fiscal year, or on average during the previous three fiscal years, total assets exceeding seventy-five million dollars (\$75,000,000).

1 (5) A one-time sale or transfer of a practice or property or
2 other financial interest between a licensee and the recipient of the
3 referral if the sale or transfer is for commercially reasonable
4 terms and the consideration is not affected by either party's
5 referral of any person or the volume of services provided by
6 either party.

7 (6) A personal services arrangement between a licensee or an
8 immediate family member of the licensee and the recipient of the
9 referral if the arrangement meets all of the following
10 requirements:

11 (A) It is set out in writing and is signed by the parties.

12 (B) It specifies all of the services to be provided by the
13 licensee or an immediate family member of the licensee.

14 (C) The aggregate services contracted for do not exceed those
15 that are reasonable and necessary for the legitimate business
16 purposes of the arrangement.

17 (D) A person who is referred by a licensee or an immediate
18 family member of the licensee is informed in writing of the
19 personal services arrangement that includes information on
20 where a person may go to file a complaint against the licensee or
21 the immediate family member of the licensee.

22 (E) The term of the arrangement is for at least one year.

23 (F) The compensation to be paid over the term of the
24 arrangement is set in advance, does not exceed fair market value,
25 and is not determined in a manner that takes into account the
26 volume or value of any referrals or other business generated
27 between the parties.

28 (G) The services to be performed under the arrangement do
29 not involve the counseling or promotion of a business
30 arrangement or other activity that violates any state or federal
31 law.

32 (c) (1) A licensee may refer a person to a health facility, as
33 defined in Section 1250 of the Health and Safety Code, or to any
34 facility owned or leased by a health facility, if the recipient of the
35 referral does not compensate the licensee for the patient referral,
36 and any equipment lease arrangement between the licensee and
37 the referral recipient complies with the requirements of
38 paragraph (2) of subdivision (b).

39 (2) Nothing shall preclude this subdivision from applying to a
40 licensee solely because the licensee has an ownership or

1 leasehold interest in an entire health facility or an entity that
2 owns or leases an entire health facility.

3 (3) A licensee may refer a person to a health facility for any
4 service classified as an emergency under subdivision (a) or (b) of
5 Section 1317.1 of the Health and Safety Code.

6 (4) A licensee may refer a person to any organization that
7 owns or leases a health facility licensed pursuant to subdivision
8 (a), (b), or (f) of Section 1250 of the Health and Safety Code if
9 the licensee is not compensated for the patient referral, the
10 licensee does not receive any payment from the recipient of the
11 referral that is based or determined on the number or value of any
12 patient referrals, and any equipment lease arrangement between
13 the licensee and the referral recipient complies with the
14 requirements of paragraph (2) of subdivision (b). For purposes of
15 this paragraph, the ownership may be through stock or
16 membership, and may be represented by a parent holding
17 company that solely owns or controls both the health facility
18 organization and the affiliated organization.

19 (d) A licensee may refer a person to a nonprofit corporation
20 that provides physician services pursuant to subdivision (l) of
21 Section 1206 of the Health and Safety Code if the nonprofit
22 corporation is controlled through membership by one or more
23 health facilities or health facility systems and the amount of
24 compensation or other transfer of funds from the health facility
25 or nonprofit corporation to the licensee is fixed annually, except
26 for adjustments caused by physicians joining or leaving the
27 groups during the year, and is not based on the number of
28 persons utilizing goods or services specified in Section 650.01.

29 (e) A licensee compensated or employed by a university may
30 refer a person for a physician service, to any facility owned or
31 operated by the university, or to another licensee employed by
32 the university, provided that the facility or university does not
33 compensate the referring licensee for the patient referral. In the
34 case of a facility that is totally or partially owned by an entity
35 other than the university, but that is staffed by university
36 physicians, those physicians may not refer patients to the facility
37 if the facility compensates the referring physicians for those
38 referrals.

39 (f) The prohibition of Section 650.01 shall not apply to any
40 service for a specific patient that is performed within, or goods

1 that are supplied by, a licensee's office, or the office of a group
2 practice. Further, the provisions of Section 650.01 shall not alter,
3 limit, or expand a licensee's ability to deliver, or to direct or
4 supervise the delivery of, in-office goods or services according to
5 the laws, rules, and regulations governing his or her scope of
6 practice.

7 (g) The prohibition of Section 650.01 shall not apply to
8 cardiac rehabilitation services provided by a licensee or by a
9 suitably trained individual under the direct or general supervision
10 of a licensee, if the services are provided to patients meeting the
11 criteria for Medicare reimbursement for the services.

12 (h) The prohibition of Section 650.01 shall not apply if a
13 licensee is in the office of a group practice and refers a person for
14 services or goods specified in Section 650.01 to a multispecialty
15 clinic, as defined in subdivision (l) of Section 1206 of the Health
16 and Safety Code.

17 (i) The prohibition of Section 650.01 shall not apply to health
18 care services provided to an enrollee of a health care service plan
19 licensed pursuant to the Knox-Keene Health Care Service Plan
20 Act of 1975 (Chapter 2.2 (commencing with Section 1340) of
21 Division 2 of the Health and Safety Code).

22 (j) The prohibition of Section 650.01 shall not apply to a
23 request by a pathologist for clinical diagnostic laboratory tests
24 and pathological examination services, a request by a radiologist
25 for diagnostic radiology services, or a request by a radiation
26 oncologist for radiation therapy if those services are furnished
27 by, or under the supervision of, the pathologist, radiologist, or
28 radiation oncologist pursuant to a consultation requested by
29 another physician.

30 (k) This section shall not apply to referrals for services that are
31 described in and covered by Sections 139.3 and 139.31 of the
32 Labor Code.

33 (l) This section shall become operative on January 1, 1995.

34 *SEC. 2. No reimbursement is required by this act pursuant to*
35 *Section 6 of Article XIII B of the California Constitution because*
36 *the only costs that may be incurred by a local agency or school*
37 *district will be incurred because this act creates a new crime or*
38 *infraction, eliminates a crime or infraction, or changes the*
39 *penalty for a crime or infraction, within the meaning of Section*
40 *17556 of the Government Code, or changes the definition of a*

1 *crime within the meaning of Section 6 of Article XIII B of the*
2 *California Constitution.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, 05/11/06.**